

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 195 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and Sd/-

Hon'ble MR.JUSTICE P.B.MAJMUDAR Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO
1 to 5 No

COMMISSIONER OF INCOME-TAX

Versus

KANCHANJUNGA INVESTMENT PVT LTD

Appearance:

MR BB NAIK with MR MANISH R BHATT for Petitioner
MR DA MEHTA for MR KC PATEL for
Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE P.B.MAJMUDAR

Date of decision: 20/09/1999

ORAL JUDGEMENT

(Per B.C.Patel, J.)

The present reference arises at the instance of

the Commissioner of Income-tax, Gujarat-I, Ahmedabad and Kanchanjunga Investment Pvt. Ltd., Ahmedabad. It transpires that the Revenue requested the Tribunal to refer three questions. However, Questions Nos.2 & 3 as sought to be referred to this Court have not been referred by the Tribunal and the application qua these two questions have been rejected. So far as Question No.1 is concerned, the Tribunal re-framed the question, which reads as under:

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the amounts of Rs.10,52,028/- should not be added to the assessee's income and setting aside the CIT's order on this point?"

2. So far as the assessee is concerned, in all 15 questions were raised for making a reference to this Court. However, the Tribunal has referred only two questions to this Court, which are referred to in paragraph 11. The said two questions are as under:

(1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the applicable or effective rate of interest was 13.25% and that there was no variation in the agreement which resulted in continuation of effective rate of interest at 11.25%?

(2) Whether, the Tribunal was justified in holding that the positive evidence was necessary regarding waiver of interest above the rate of 11.25% and in ignoring the entries made in the books of account?"

3. We were taken through the order passed by the Tribunal and the relevant documents. The question pertains to 'interest'. The Commissioner of Income-tax, while examining the appeal, exercised revisional jurisdiction. and, vide Annexure-E, passed an order rejecting the contention of the assessee holding that: "It is, therefore, not correct for the assessee to argue that the Assignment Deed was made on condition that the term governing interest and repayment will be same as provided in the sale deed when Karamchand Premchand Pvt. Ltd. sold the shares to Sercon Pvt. Ltd.". The Commissioner of Income-tax hearing the appeal and exercising the powers under Section 263 of the Act was of the view that if the assessee company was entitled to receive interest from Telerad Pvt. Ltd. then it cannot

be said that it was not entitled to receive the interest from Sercon Pvt. Ltd.

4. The matter was remanded for adjudication in accordance with law. It seems that the matter remanded, without any positive observations or findings, probably the assessee would not have preferred an appeal before the Tribunal but as some observations were made without sufficient evidence being placed on record, the assessee was constrained to prefer an appeal before the Tribunal and the Tribunal allowed the appeal in part. The Tribunal considering the documents placed on record found that a doubt is created. The second resolution by Sercon Pvt. Ltd. dated 10.8.1973 mentions the payment of interest and no rate is specified therein. Therefore, on consideration of the date of the deed of assignment and the resolution put together, two views are possible on the question whether interest was payable or not and ultimately held that the benefit must go to the assessee and further held that so far as Sercon Pvt. Ltd. is concerned, the interest is not chargeable. So far as Telerad Pvt. Ltd. is concerned, the assessee on receiving the interest reflected the same in the revised return and according to the assessee, the assessee was liable to pay the tax insofar as Telerad Pvt. Ltd. is concerned on accrual basis. There is a dispute with regard to the rate of interest; whether it should be 11.25% or 13.25%. All these questions are required to be considered.

5. We find it difficult to answer the reference, more particularly in the instant case when Mr. Mehta, learned Counsel pointed out a letter produced on record indicating that, insofar as Sercon Pvt. Ltd. is concerned, the question of interest does not arise and the Tribunal has ignored that letter. As pointed out by the Apex Court in the case of COMMISSIONER OF INCOME TAX v. INDIAN MOLASSES CO. PVT. LTD. reported in 78 ITR 474, two courses are open. Mr. Naik, learned Counsel also faced difficulties in absence of certain documentary evidence. Under the circumstances, if the Commissioner of Income-tax would have remanded the matter to the Income-tax Officer without making observations or recording findings, possibly, interest of justice would have been served. If the Assessing Officer would have been directed to consider the matter afresh on the basis of the evidence that may be produced by the parties, possibly, in our opinion, there would have been no grievance. It is under these circumstances, we set aside the orders passed by the authorities below including the order of the Tribunal and the Assessing Officer is

directed to consider the matter afresh with a liberty to the assessee to produce the relevant evidence on the record of the case. It goes without saying that it is open for the Assessing Officer to call for the evidence for further information if need arises. It goes without saying that the Assessing Officer will pass an order without being influenced by the orders passed by the Commissioner of Income-tax or the Appellate Tribunal or any observations made by this Court.

6. Under the circumstances, we direct the Tribunal to pass an appropriate order keeping the aforesaid observations in mind. We decline to answer reference in view of the aforesaid facts and circumstances of the case.

(KMG Thilake)

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